

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL ALLEN POURIER,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

NO: 12-CV-5081-TOR

ORDER ADOPTING REPORT AND
RECOMMENDATION TO DENY
WRIT OF HABEAS CORPUS

BEFORE THE COURT for resolution is the Report and Recommendation entered November 15, 2012 (ECF No. 25) recommending that the Petition for Writ of Habeas Corpus (ECF No. 11) be denied.

Petitioner untimely filed objections on November 30, 2012. ECF No. 26. The Court has nonetheless considered Petitioner's objections.

Mr. Pourier alleges the Magistrate Judge's report ignores that petitioner was deprived of effective assistance of counsel. ECF No. 26 at page 3(a). To the contrary, the Magistrate Judge expressly considered Mr. Pourier's claim of ineffective assistance of counsel and found that counsel provided effective

1 assistance despite Mr. Pourier voluntarily absenting himself from trial the morning
2 of the second day. ECF No. 25 at 2, 9-17.

3 Mr. Pourier alleges the Magistrate Judge erred by determining that the state
4 court's decision was neither contrary to nor an unreasonable application of United
5 States Supreme Court precedent. ECF No. 26 at page 3(a). Mr. Pourier fails to
6 cite relevant supporting precedent.

7 Mr. Pourier alleges both the Magistrate Judge and the Court of Appeals
8 failed to appreciate that Mr. Pourier demonstrated an interest in a plea offer in that
9 he stated he wished to be allowed to plead "the same plea as my co-defendant
10 Joshua Scott concurrent with my bail jumping." ECF No. 26 at 4 (referring to Mr.
11 Pourier's personal restraint petition at page 6). According to his Petition for Writ
12 of Habeas Corpus however, Joshua Scott's plea deal was only 75 months with a 1
13 year enhancement, ECF No. 11 at 15, not the 15-year recommendation offered to
14 Mr. Pourier. Thus, his allegation that he would have accepted a plea offer is
15 meaningless, since the plea offer he wanted was not offered to him.

16 Alternatively, Mr. Pourier alleges he is entitled to an evidentiary hearing,
17 apparently to explore Mr. Pourier's conversation with counsel ten minutes before
18 jury selection. ECF No. 26 at page 4, n 1. For the reasons stated in the magistrate
19 judge's report, ECF No. 25 at 18, Mr. Pourier fails to show he is entitled to an
20 evidentiary hearing.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. The Report and Recommendation (ECF No. 25) to deny the Petition for a
3 Writ of Habeas Corpus is **ADOPTED** in its entirety.

4 2. The Petition is **DENIED**.

5 3. The Court declines to issue a certificate of appealability.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 Order and an Order of Judgment, forward copies to the parties, and **CLOSE** the
8 file.

9 **DATED** this 6th day of December, 2012.

10 *s/ Thomas O. Rice*

11 **THOMAS O. RICE**
12 United States District Judge
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